

MUFTHIHA SABARATNAM, ESQ. (State Bar No. 162982)
Law Offices of Mufthiha Sabaratnam
1300 Clay St. #600
Oakland, CA 94612
Tel:(510) 205-0986
Fax : (510)225-2417
Email: mufti@taxandbkllaw.com

Attorneys for Debtors

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - OAKLAND

In Re:	)	Case Number: 18-41099 WJL
	)	Chapter 11
Marc Protenic	)	DEBTORS' REPLY TO CREDITOR
Dena Protenic	)	BOSCO CREDIT, LLC,
	)	SUPPLEMENTAL RESPONSE
	)	DATE: January 9, 2019
	)	TIME: 10.30 a.m.
	)	CTRM: 220
Debtors.	)	1300 Clay Street
	)	Oakland, CA 94612
		Hon. W.J. Lafferty

TO: CREDITOR, BOSCO Credit, LLC, OFFICE OF THE UNITED STATES
TRUSTEE AND INTERESTED PARTIES:

Debtors, **Marc and Dena Protenic**, Debtors in this Chapter 11 filing, hereby submits this reply ("Reply") to the Supplemental Response filed by Bosco Credit, LLC, Docket #46, to the Debtors' Objection to the Proof of Claim (the "Claim Objection").

1 BOSCO CREDIT LLC, HAS MERELY CONCLUDED WITHOUT ANY SUPPORTING
2 FACTS THAT THE ANTI-DEFICIENCY STATUTES ARE IN-APPLICABLE
3 Starting with the Nature and Purpose of Statute.

4 The provisions of this section are designed and intended to implement a statutory public policy
5 ordained to **protect debtors as a class against deficiency judgments in foreclosures. Bank of**
6 **Am. Nat. Trust & Sav. Ass'n v. United States** (S.D. Cal. June 10, 1949), 84 F. Supp. 387, 1949
7 U.S. Dist. LEXIS 2664. (Emphasis added)

8 But BOSCO, CREDIT, LLC disregards this protection against deficiency judgements.

9 **§ 580d.** Deficiency judgment after foreclosure under power of sale

10 (a) Except as provided in subdivision (b), no deficiency shall be owed or collected, and no
11 deficiency judgment shall be rendered for a deficiency on a note secured by a deed of trust or
12 mortgage on real property or an estate for years therein executed in any case in which the real
13 property or estate for years therein has been sold by the mortgagee or trustee under power of sale
14 contained in the mortgage or deed of trust.

15 (b) The fact that no deficiency shall be owed or collected under the circumstances set forth in
16 subdivision (a) does not affect the liability that a guarantor, pledgor, or other surety might
17 otherwise have with respect to the deficiency, or that might otherwise be satisfied in whole or in
18 part from other collateral pledged to secure the obligation that is the subject of the deficiency.

19 (c) This section does not apply to a deed of trust, mortgage, or other lien given to secure the
20 payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the
21 Commissioner of Business Oversight or which is made by a public utility subject to the Public
22 Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code).

23 **Cal Code Civ Proc § 580d**

24 This section does not preclude creditor from foreclosing on any additional security, such as
25 chattel mortgage, but pursuit of additional security is not a deficiency judgment, and right to
26 exhaust such security gives no right to such judgment. **Freedland v. Greco** (Cal. Nov. 4, 1955),
27 45 Cal. 2d 462, 289 P.2d 463, 1955 Cal. LEXIS 336.

1 *BOSCO CREDIT, LLCs* position is set forth in the Supplemental Response, on page 3, that this
2 is not so, citing ***Roseleaf Corp. v. Chierighino***, 59 Cal. 2d 35, 40,378 P.2d 97 (1963) and ***In re***
3 ***Marriage of Oropallo***, 68 Cal. App. 4th 997, 1002, 80 Cal. Rptr. 2d 669 (1998) in support..
4 The argument offered using ***Roseleaf Corp. v. Chierighino***, according the *Bosco Credit LLC* is :
5 “However, it has been determined that California Code of Civil Procedure §§580a, 580b, 580d,
6 or 726 do not apply to a sold out junior lienholder. "The purpose of the fair-value limitations in
7 sections 580a and 726 does not extend to sold-out junior lienors." ***Roseleaf Corp. v.***
8 ***Chierighino***, 59 Cal. 2d 35, 40,378 P.2d 97 (1963).

9 But the holding in ***Roseleaf Corp. v. Chierighino*** was in reference to the fair value limitations
10 in sections 580a and 726 as stated below:

11 “Here, the trial court considered the question of whether the creditor- bank holding both senior
12 and junior liens on the same real property, which purchases that property at the senior lien
13 nonjudicial foreclosure sale, must file its action to collect the obligation secured by the junior
14 lien within three months of that sale, pursuant to section 580a. He impliedly found, in his rulings
15 on demurrer and summary issue adjudication, that under these circumstances Bank was a
16 **"sold-out junior lienor"** (***Roseleaf Corp. v. Chierighino***, supra, 59 Cal.2d at p. 39) as to
17 **which the three-month limitation period of section 580a was inapplicable**; i.e., although
18 Bank's deficiency causes of action were filed in January 1990, more than three months after its
19 senior lien foreclosure sale in August 1988, section 580a was no bar to those causes of action
20 because Bank was a sold- out junior lienor to whom **section 580a and its limitation period**
21 **were inapplicable under Roseleaf. Roseleaf held that "The purpose of the fair-value**
22 **limitations in sections 580a and 726 does not extend to sold-out junior lienors."** (Id. at p. 40.)
23 (3) Bank contends that, since it foreclosed on its first but not its second deed of trust, section
24 580a and the three-month limitation period it contains do not apply here because it is such a
25 "sold-out junior lienor," although it concededly reached that status by the act of its own senior
26 lien foreclosure.”

27 The second case offered in support of Bosco Credit LLCs position is ***In re Marriage of***
28 ***Oropallo***. Set forth below are the relevant portions of the case, the Case Summary and Outcome

1 which are quite contrary to Bosco Credit LLC's conclusions:

2 **Case Summary**

3 Procedural Posture

4 Appellant husband challenged the decision of the Superior Court of Los Angeles County
5 (California), which permitted respondent wife to collect a deficiency judgment against appellant
6 because a senior lienholder had foreclosed on two of six properties securing a note, even after
7 respondent had already proceeded by way of nonjudicial trustee's sale on the four other
8 properties securing the note.

9 **Overview**

10 After the trial court ruled in a motion for reconsideration that respondent wife was not precluded
11 by the one action rule from pursuing an action on a note secured by second deeds of trust on
12 several pieces of real property as part of a marital dissolution, appellant husband challenged the
13 judgment against him. **The court reversed and held that even though respondent was a**
14 **junior lienholder, and the property at issue had been foreclosed on by a senior lienholder,**
15 **the antideficiency bar of Cal. Civ. Proc. Code § 580d precluded respondent from obtaining**
16 **a deficiency judgment. Because respondent had already pursued non-judicial foreclosure**
17 **on other properties securing the note, she had elected her remedy within the meaning of**
18 **the one action rule. Therefore, she could not obtain a deficiency judgment against**
19 **appellant.**

20 **Outcome**

21 The court reversed the trial court's judgment and held that because respondent wife had already
22 pursued non-judicial foreclosure on some of the properties which secured a note given to her by
23 appellant husband, she was barred by the one action rule from obtaining a deficiency judgment
24 regarding the other properties.(Emphasis added).

25 These holdings are contrary to the assumptions and conclusions drawn by Bosco Credit
26 LLC which are set forth below:

27 *"Moreover, the Court expanded this position to California Code of Civil Procedure §§580b and*
28 *580d. Id at 43. This reasoning was extended in In re Marriage of Oropallo when the Court*

1 *referenced Rose leaf as the controlling authority in that junior lienholders are excepted from*
2 *the anti-deficiency statutes. In re Marriage of Oropallo, 68 Cal. App. 4th 997, 1002, 80 Cal.*
3 *Rptr. 2d 669 (1998).*” (Emphasis Added).

4 Bosco Credit, LLC, then concludes by stating , “In light of the fact that the Courts have
5 made an exception for junior lienholders who have not foreclosed, Debtor's contentions that
6 California Code of Civil Procedure §§580a,580b, 580d, or 726 apply are unfounded. Thus, the
7 Objection to Claim should be denied.”

8 **Cal. Civ. Proc. Code § 580d** prohibits deficiency judgments on all notes secured by a
9 deed of trust or mortgage upon real property in any case in which the real property has been sold
10 by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust. The
11 effect of § 580d is that the beneficiary of a deed of trust executed after 1939 cannot hold the
12 debtor for a deficiency unless he uses the remedy of judicial foreclosure.

13 **In re Marriage of Oropallo**, 68 Cal. App. 4th 997, 999, 80 Cal. Rptr. 2d 669, 670, 1998 Cal.
14 App. LEXIS 1064, *1, 98 Cal. Daily Op. Service 9286, 98 Daily Journal DAR 12945

15 In California, a creditor’s right to enforce a debt secured by a trust deed on real property
16 is restricted by statute. The creditor must rely upon his security before enforcing the debt. (CCP
17 §§ 580a, 725a, 726.) If the security is insufficient, his right to a judgment against the debtor for
18 the deficiency may be limited or barred by CCP §§ 580a, 580b, 580d, or 726. **Birman v. Loeb**
19 (Cal. App. 2d Dist. June 3, 1998), 64 Cal. App. 4th 502, 75 Cal. Rptr. 2d 294, 1998 Cal. App.
20 LEXIS 498.

21 There was nothing left to secure the second trust deed holder in the present case. There
22 was no separate security that the second trust deed holder could bring an action against the
23 Debtor.

24 CONCLUSION

25 BOSCO CREDIT, LLC, was not entitled to entered into a deficiency judgement, ignoring the
26 anti- deficiency statutes. The provisions in the anti- deficiency statutes are designed and
27 intended to implement a statutory public policy ordained **to protect debtors as a class against**
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1 **deficiency judgments in foreclosures.**

2 They are not as Bosco implies, applicable only to the foreclosing lienholder.

3 The debtors respectfully request that court take into consideration the public policy ordained to
4 protect the debtors as a class against deficiency judgements and rule accordingly.

5 In light of the foregoing facts, BOSCO CREDIT, LLC's Original POC and Amended Proof of
6 Claim are contrary to the analysis above and should be denied.
7

8 WHEREFORE, the Debtor respectfully requests that the Court enter an Order:

- 9 1. Sustaining the Objection to Claim of BOSCO CREDIT, LLC and listing the amount
10 owed as zero as stated above;
11 2. For such other and further relief as the Court may deem just and proper.

12 DATE: December 29, 2018

13 Respectfully Submitted,
14 Law Offices of Mufthiha Sabaratnam

15 /s/Mufthiha Sabaratnam, Esq.
16 Counsel for Debtors
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